

**MINUTES  
of the  
SECOND MEETING  
of the  
WATER AND NATURAL RESOURCES COMMITTEE**

**July 30-31, 2019  
Truth or Consequences Civic Center  
Truth or Consequences**

The second meeting of the Water and Natural Resources Committee was called to order by Senator Joseph Cervantes, chair, on July 30, 2019 at 9:08 a.m. at the Truth or Consequences Civic Center in Truth or Consequences.

**Present**

Sen. Joseph Cervantes, Chair  
Rep. Derrick J. Lente, Co-Vice Chair  
Rep. Matthew McQueen, Co-Vice Chair  
Rep. Gail Armstrong (7/30)  
Rep. Paul C. Bandy  
Sen. Craig W. Brandt  
Rep. Christine Chandler  
Rep. Angelica Rubio  
Rep. Larry R. Scott  
Sen. Benny Shendo, Jr. (7/30)  
Sen. Mimi Stewart  
Rep. James R.J. Strickler  
Rep. Candie G. Sweetser  
Sen. Pat Woods

**Advisory Members**

Sen. Pete Campos  
Rep. Randal S. Crowder  
Rep. Candy Spence Ezzell (7/30)  
Sen. Ron Griggs  
Rep. Susan K. Herrera  
Rep. Tim D. Lewis  
Sen. Linda M. Lopez  
Sen. Mary Kay Papan  
Rep. William "Bill" R. Rehm  
Rep. G. Andrés Romero (7/30)  
Rep. Patricia Roybal Caballero  
Rep. Tomás E. Salazar  
Rep. Debra M. Sariñana  
Sen. Antoinette Sedillo Lopez

**Absent**

Rep. Abbas Akhil  
Rep. Joanne J. Ferrary  
Sen. Sander Rue  
Rep. Nathan P. Small  
Rep. Melanie A. Stansbury  
Sen. Jeff Steinborn

Rep. Anthony Allison  
Rep. Jack Chatfield  
Sen. Carlos R. Cisneros  
Sen. Gregg Fulfer  
Sen. Stuart Ingle  
Sen. Gay G. Kernan  
Rep. Javier Martínez  
Rep. Rodolpho "Rudy" S. Martinez  
Sen. Steven P. Neville  
Rep. Greg Nibert  
Sen. Gerald Ortiz y Pino  
Rep. Jane E. Powdrell-Culbert  
Sen. Nancy Rodriguez  
Sen. William E. Sharer

Sen. Peter Wirth  
Rep. Martin R. Zamora

Sen. John Arthur Smith  
Rep. James G. Townsend

**Guest Legislator**

Rep. Rebecca Dow

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**

Shawna Casebier, Legislative Council Service (LCS)

Pam Stokes, LCS

Jeret Fleetwood, LCS

Sara Wiedmaier, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file and on the New Mexico Legislature's website at [www.nmlegis.gov](http://www.nmlegis.gov).

**Tuesday, July 30**

**Welcome and Introductions**

Senator Cervantes welcomed the committee and invited members of the committee, staff and audience to introduce themselves.

Mayor Sandra Whitehead welcomed the committee to Truth or Consequences. She mentioned a few of the attractions in the town, such as Elephant Butte Lake, the downtown area, Spaceport America and the Geronimo Springs Museum.

**Lower Rio Grande Water Users and Elephant Butte Irrigation District (EBID);  
Negotiations on Water Management in the Lower Rio Grande and Related Issues**

John Utton, attorney, New Mexico State University (NMSU), Public Service Company of New Mexico and Camino Real Regional Utility Authority; Jim Brockmann, attorney, City of Las Cruces; Samantha Barncastle, attorney, EBID; and Tyson Achen, member, Board of Directors, New Mexico Pecan Growers, discussed various issues regarding water management in the lower Rio Grande (LRG).

Mr. Utton began by describing the *Texas v. New Mexico* litigation as the biggest problem facing the LRG and compared the situation to the Pecos River Compact, which cost the state over \$100 million to litigate. He stated that any solution will require a balance between mitigating surface water depletions and ensuring the continued use and protection of the aquifer under Dona

Ana County while still meeting delivery requirements to Texas. In 2008, an operating agreement was entered into by the EBID and Texas, which agreement, Mr. Utton opined, overcompensated Texas and put an unfair burden on New Mexico. The operating agreement shifted thousands of acre-feet of water from the EBID to Texas, of which some amount was appropriate to offset additional ground water pumping in New Mexico, he said, but this agreement put the entirety of the burden to cover efficiency losses on New Mexico, despite pumping by Texas and Mexico. Mr. Utton acknowledged that the EBID was in a difficult negotiating position, but siding with Texas in the litigation made the situation more difficult, he added.

Mr. Utton said that the Lower Rio Grande Water Users (LRGWU) are prepared to establish and fund a ground water management program with the help of the legislature, and he suggested that funding could also come from the water users themselves. He discussed work being done with the Office of the State Engineer (OSE) to map ground water and study the effects of pumping. He stated that even if New Mexico could regain some of the surface water from Texas, total depletions are beyond what is sustainable, noting that the LRGWU have proposed a pilot project to reduce depletions. Mr. Utton also discussed the 2016 settlement framework proposed by the LRGWU and emphasized the need for all New Mexico parties to work together to ensure that Texas receives the water it is entitled to under the Rio Grande Compact.

Ms. Barncastle provided the committee with an overview of the 2008 operating agreement and the 2016 settlement framework. She began by stating that the EBID despises the notion that it sided with Texas. She said that the EBID did not want to litigate against its own state but was forced into that position in seeking to protect the water rights of farmers in southern New Mexico. Despite the EBID originally filing litigation in 1986, there is still no assurance of protection of farmers' rights, Ms. Barncastle said. The 2008 operating agreement sought to offset increased ground water pumping to satisfy delivery obligations to Texas while still ensuring a continued water supply for farmers in the EBID.

Ms. Barncastle explained that the EBID is opposing New Mexico in the litigation because the Rio Grande Compact obligates New Mexico to make water deliveries to Texas at the gauging station just above Elephant Butte Reservoir. Once the water reaches the reservoir, New Mexico and the OSE no longer have authority and the EBID is then responsible for managing the water and allocating the appropriate amount to Texas because the EBID owns the project infrastructure and has authority over releases. She stated that this problem should not fall on water users alone and suggested that the state consider new potential sources of water, such as desalination technology.

Mr. Brockmann addressed the breakdown of water use in the LRG, citing irrigation as the largest portion of ground water diversions at roughly 85 percent, municipal use at around 13 percent and industry use at about two percent. Mr. Brockmann shared that unless a local entity is formed to manage and administer water use, the OSE is responsible for strict priority administration. He noted that variable water supply requires adaptive management to meet

compact deliveries and that this would best be achieved by a local ground water management entity. He also suggested legislation for a system of rotational fallowing to reduce ground water depletions, and he shared plans by the OSE and the Interstate Stream Commission (ISC) to enact a pilot program in the next year.

Lastly, Mr. Achen discussed the importance of water in the LRG to farmers, municipalities and the universities. He discussed his experience with over 30 years in farming, the formation of New Mexico Pecan Growers and some of the initiatives by the farming community to resolve water issues. He said that the operating agreement resolved many issues but needs to be adjusted to address ground water concerns. Acknowledging that priority administration would be detrimental to farmers in the area, Mr. Achen said that farm groups are working with the LRGWU to avoid infighting and resolve these issues to sustain an agricultural livelihood. He also noted that the United States is trying to federalize the state's ground water, which is contrary to New Mexico law and strongly opposed by the farm groups.

In response to questions from the committee, the panelists said that:

- Active Water Resource Management was created as an alternative to priority administration, allowing the OSE to set district regulations with local participation;
- the amount of water to be delivered to Texas is based on index flows at the gauging stations and compact boundary lines;
- although the EBID is not a member of the LRGWU, it is actively engaged in the process to find a solution;
- in order to reduce the state's dependence on ground water, other sources of water will need to be explored and the feasibility of desalination should be evaluated;
- there is a desalination plant located in Alamogordo that will soon be operational, but desalination is very expensive;
- drip irrigation increases crop yield, so is considered more efficient, but because of increased evapotranspiration rates by plants, more water is actually consumed because less water is returned to the aquifer;
- all water users, not just farmers, need to improve water conservation practices;
- New Mexico was one of the first states to recognize the connection between ground water and surface water, but EBID jurisdiction encompasses surface water while the OSE has authority over ground water, as defined in New Mexico statute;
- New Mexico should not be held liable for depletions by Texas and Mexico;
- the special master in the litigation said that the EBID has priority over the water in Elephant Butte Reservoir because it paid for the dam to be constructed; and
- the "buy and dry" policy on the Pecos River adversely affected surrounding farmers and led to abandoned farmland overrun with weeds.

Responding to a question regarding the adjudication of water rights in the LRG, Greg Ridgley, general counsel, OSE, said that about 45 percent of the sub-files have been adjudicated, out of over 14,000 cases.

## **Executive Session (Closed Meeting); Briefing on *Texas v. New Mexico***

The committee went into executive session to discuss ongoing litigation.

### **Interbasin Water Transfer Policy Considerations**

Adrian Oglesby, director, Utton Transboundary Resources Center, discussed interbasin water transfer policy and issues, examples of interbasin transfers within the state and across the country and past legislative action regarding interbasin water transfers. Mr. Oglesby shared that under current law, the OSE has the authority to approve or deny interbasin water transfers and discussed the proposed ground water transfer from the Plains of San Agustin to the Rio Grande. He shared that the OSE originally denied the San Agustin project on the basis that the application lacked specificity, did not identify an end user and was opposed by multiple entities and individuals throughout the state who felt the transfer would adversely impact their rural, agricultural lifestyle and lead to depletion of ground water supplies. Mr. Oglesby reported that the denial was appealed in district court but the court upheld the decision of the State Engineer. He noted that the OSE must reject applications that are likely to impair existing water rights, hinder conservation goals or harm the public welfare of the state.

Mr. Oglesby stated that large urban cities like Los Angeles, Denver and Phoenix would not exist without interbasin water transfers and that there are many transfers occurring around the world. He noted that a perfect example of a successful interbasin water transfer is the San Juan-Chama Project. He highlighted some current project proposals and the opposition of various community groups to these projects, such as transfers from the Pecos River and the Estancia Basin to Santa Fe. Highlighting past legislative attempts to address interbasin water transfers, Mr. Oglesby discussed House Memorial 13 (1997), which directed the OSE to study interbasin water transfers; Senate Bill 77 (2014), which would have required the OSE to evaluate applications for interbasin water transfers based on 11 explicit criteria; and House Bill 418 (2017), which would have imposed additional requirements on the OSE to consider recharge rates for aquifers and water quality. He shared that the United States Environmental Protection Agency (EPA) has a rule regarding water transfers, which states that if there is no intervening use of the water being transferred, a pollution control permit is not required from the EPA.

Responding to questions from the committee, Mr. Oglesby said that:

- local communities have the ability to participate in the protest process but that it is difficult to legislate a solution for more local involvement;
- when the OSE considers the impact of a water transfer project on the public welfare of any community, it must consider surrounding communities as well;
- there is no need for legislative approval of projects because the state engineer has the ability to apply regulations independently; and
- Senate Bill 77 (2014) addressed water speculation but could have gone further.

Mr. Ridgley responded to a question regarding the Plains of San Agustin court ruling, stating that the judge issued a memorandum opinion but that no conclusions have yet been made.

## **History of Elephant Butte Dam and the EBID**

Gary Esslinger, treasurer and manager, EBID, provided the committee with a history of settlements in the Rio Grande area, the construction of Elephant Butte Dam and the formation of the EBID. He said that shortly after the federal Reclamation Act was passed in 1902, the Rio Grande Project was authorized and construction of Elephant Butte Dam began. He stated that the United States and Mexico signed a treaty to ensure that enough water was allocated to local and downstream farmers on the LRG, while also ensuring that 60,000 acre-feet is delivered in perpetuity to Mexico. Elephant Butte Dam was completed in 1916, and the Rio Grande Compact, authorized in 1938, served as an international compact for surface water allocation among Colorado, New Mexico, Texas and Mexico to ensure equitable distribution of the waters of the Rio Grande.

Mr. Esslinger described the EBID as a "no man's land" because the district is geographically located in New Mexico but falls under Rio Grande Compact accounting for Texas and the surface water is managed by the EBID while the ground water is managed by the OSE. He discussed EBID release and diversion points, climate change response strategies, storage and annual release data from the past 100 years and innovations in water software technology. Mr. Esslinger mentioned that the EBID has 470 field sites and an advance warning system for flood tracking and runoff events. He discussed flood control facilities and the challenges of storing water and stressed the need for funding to restore watersheds. Mr. Esslinger highlighted critical habitat areas designated under the federal Endangered Species Act of 1973 (ESA) and efforts by the EBID to transfer water to habitat restoration sites that do not disrupt local farmers. He also talked about work being done in the district to generate renewable energy through hydroelectric application of irrigation conveyance. Lastly, Mr. Esslinger said that the EBID meters ground water and has seen a net loss in storage in the Mesilla Valley since 2010. He shared the EBID's Aquifer Management Plan goals and suggested that the EBID work collaboratively with the legislature and water users in the LRG to achieve these goals.

Responding to questions from committee members, Mr. Esslinger said that:

- farmers managed to stay solvent in dry years by applying for permits from the OSE for ground water pumping;
- the EBID and others will need to explore new sources of water, such as capturing storm water or the desalination of brackish water sources;
- the EBID supports credit water diversion to Elephant Butte Reservoir because Elephant Butte Lake State Park is one of the most profitable state parks but that the EBID is also concerned about evaporative losses that New Mexico will have to pay for;
- the EBID has two drone operators that track arroyo flows, damages and crops;
- the total demand for surface and ground water has been increasing, as more productive crops require more water; and

- surface water allocations are based on demand and availability in storage, and if availability does not meet a farmer's needs, the farmer must pump additional ground water from wells at the farmer's own expense or purchase water from other users.

### **Elephant Butte Dam Water Level Impacts on Ecology and Economy**

Earl Conway, conservation director, New Mexico BASS Nation, discussed the impacts of water fluctuations in Elephant Butte Reservoir on the ecology and economy of the area. He listed the federal Bureau of Reclamation, the State Parks Division of the Energy, Minerals and Natural Resources Department and the Department of Game and Fish as the key players in management of the reservoir. He discussed daily fluctuations in water levels that threaten fish habitat and said that they are experimenting with different options to provide resilient habitat. He said that precipitation is in nature's hands but that the water managers have the ability to mitigate annual fluctuations. Mr. Conway then went on to list some of the other negative effects of severe water fluctuations, such as increased fish disease and mortality, boating hazards, marina and park operating costs, erosion and sedimentation and interruption of native vegetation propagation.

Mr. Conway warned that the high sedimentation rate could leave the reservoir impaired or inoperable in as soon as 75 years. To address this issue, he suggested re-establishing a conservation pool of San Juan-Chama Project water to hold off sediment movements until a long-term solution is found. He listed additional benefits to creating a conservation pool, including the ability to maintain a quality fishery, expansion of the recreational area of the reservoir and an increase in available water for farmers and other users. He said that the only major downsides to a conservation pool would be increased evaporation rates compared to storage upriver and the need for legislation and additional funding for implementation.

Noting that Elephant Butte Lake State Park is the highest-used state park in New Mexico and that historical trends indicate roughly a 30 percent decrease in visitation during times of decreased reservoir levels, Mr. Conway emphasized the need for a life-extension project for the reservoir to address dam maintenance, sediment prevention and cost-effective channel design and maintenance. He said that among the various plans, compacts and court orders that affect water management in the EBID, there is much misalignment in operational framework.

Mr. Conway provided some ideas for improving management of the reservoir, such as:

- creating a multiyear drought contingency plan;
- controlling the fluctuation of the reservoir to not exceed six inches per day;
- creating better prevention and contingency plans for invasive species;
- working with the federal Bureau of Reclamation to recognize the reservoir as a critical fish and bird habitat and to create conservation pools;
- building attractive recreational facilities and expanding access to the reservoir;
- implementing a watershed approach for sedimentation;
- enacting policies that allow for more water management flexibility; and
- eliminating the "use it or lose it" rule.

## **Recess and Tour**

The committee recessed at 4:00 p.m. for a tour of Elephant Butte Dam.

## **Wednesday, July 31**

### **Reconvene**

Senator Cervantes reconvened the meeting at 9:00 a.m.

### **Middle Rio Grande Conservancy District (MRGCD) Overview; Middle Rio Grande Levee Projects; Federal Endangered Species Act of 1973 Collaborative Compliance Efforts; Cooperative Management of the Middle Rio Grande for Water Deliveries**

Joaquin Baca, vice chair, Board of Directors, MRGCD, Mike A. Hamman, chief executive officer and chief engineer, MRGCD, and Rolf Schmidt-Petersen, director, ISC, presented to the committee on issues and ongoing projects in the MRGCD.

Addressing the history of the MRGCD, Mr. Baca said the district was created in 1923 and works in collaboration with the OSE to provide flood protection from the Rio Grande, to drain swamp lands and to provide irrigation water to farmlands. Mr. Hamman shared that the MRGCD encompasses the Rio Grande Valley, starting at Cochiti Dam and ending at the Bosque del Apache National Wildlife Refuge, and comprises four management divisions: Cochiti, Albuquerque, Belen and Socorro. He listed some of the priorities of the district, including repairing El Vado Dam; constructing levees in urbanizing areas; protecting water rights and using water banking to keep agricultural lands in production; improving system efficiencies to prepare for shortages; and working with the ISC and the OSE to minimize debt under the Rio Grande Compact.

Mr. Hamman discussed hydrology data from the past seven years, five of which had below average annual flows, with 2018 marking the lowest runoff since 1956. He said that the San Juan-Chama Project is a critical tool in supplying the MRGCD with municipal and irrigation water and meeting compact obligations, but project shortages occurred from 2014 to 2018 and the district exhausted all San Juan-Chama supplies in 2018. He noted that the upper Rio Grande has been a highly variable system for a long time and that runoff in 2019 is expected to meet or exceed the third-highest runoff season on record, following one of the lowest seasons on record. This increase in runoff allowed the district to store over 100,000 acre-feet during the spring and create a reserve at El Vado, but 30,000 to 50,000 acre-feet may need to be released to reduce New Mexico's compact debit for the year.

Mr. Hamman stated that the district has reduced water diversions by more than 50 percent since 1997 in response to ESA requirements and drought through operational efficiency improvements, which have allowed for more consistent deliveries to Elephant Butte and more efficient use of stored water. He suggested long-term development of operational efficiency through automation, infrastructure and on-farm improvements. Mr. Hamman said that, cumulatively, New Mexico has delivered 830,000 acre-feet more than required by the Rio



Grande Compact, averaging positive by over 37,000 acre-feet per year and allowing the district to store credits to meet annual demands.

Addressing safety concerns, Mr. Hamman shared that El Vado Dam is leaking because of outdated infrastructure from the 1930s, including the spillway that needs to be replaced as well as other improvements, and currently the dam would fail in an emergency situation. He stated that the MRGCD is not seeking state funding for these improvements but is requesting that the legislature encourage the Department of Transportation to address road safety improvements on New Mexico Highway 112. Mr. Hamman also addressed efforts by the district to meet commitments under the ESA, stating that the MRGCD has made a significant annual financial commitment toward fish passages, habitat restoration and river flow management, but that it needs to improve its monitoring program to be more adaptive. He updated the committee on the progress of various levee projects and levee damage from increased runoff and noted that the MRGCD will continue to act as the local sponsor for these projects but cannot solely provide the cost share. He discussed the role of the MRGCD in its partnerships with the ISC and the OSE.

Mr. Hamman lastly listed requests to the legislature to:

- fully fund the ISC and the OSE budget requests to meet ESA commitments;
- fund other MRGCD activities from the General Fund rather than further depleting permanent funds on operating expenses;
- determine strategies for recurring cost-share funding for levee projects;
- encourage the Department of Transportation to improve the highway and crossing on El Vado Dam; and
- support capital outlay requests to address localized flooding concerns.

Mr. Schmidt-Petersen discussed the Rio Grande Compact and cooperative management in the Middle Rio Grande. He showed the breakdown of the sources of river depletions and noted that the majority of water that passes the Otowi gauge is reserved to meet delivery obligations under the compact. He said that New Mexico was able to store a lot of credit water between 2003 and 2010, which has allowed the state to maintain compliance with the compact, but he highlighted annual variability in supply. He discussed cooperative management of water operations, water rights transfer processes, channel maintenance, flood protection and levee replacements and repairs. Mr. Schmidt-Petersen also shared that the ISC is working with the MRGCD to construct and maintain habitat for endangered species under the ESA, such as the Rio Grande silvery minnow.

Responding to questions from the committee, the panelists said that:

- the MRGCD has broad authority over surface water in the district;
- the Acequias Nortenas and the Rio Chama Acequia Association are the northern equivalents of the MRGCD and the EBID;

- the maximum amount of San Juan-Chama Project water that can be diverted is 1.1 million acre-feet over a 10-year period, or 235,000 acre-feet in any one year, with restrictions;
- there are 60,000 irrigated acres in the Middle Rio Grande and 75,000 in the LRG;
- there is no metering requirement of water users in the Middle Rio Grande;
- cooperation among the EBID, the MRGCD, the ISC and the federal Bureau of Reclamation is critical for New Mexico to optimize water operations management;
- it is better to leave trees in the bosque because the Rio Grande is a shallow system and it is more beneficial to have a full canopy; however, the MRGCD is working with the Forestry Division of the Energy, Minerals and Natural Resources Department on thinning to reduce wildfires;
- the MRGCD is working on a new water-banking program to compensate farmers who are willing to fallow their land on a rotational basis; and
- the federal Bureau of Reclamation manages the San Juan-Chama diversions.

### **Approval of Minutes**

On a motion made, seconded and duly passed, the minutes of the June 4, 2019, meeting were approved as submitted.

### **Understanding Water Conservation**

J. Phillip King, P.E., Ph.D., M.B.A., professor and associate department head, Department of Civil Engineering, NMSU, and consultant, EBID, discussed water conservation concepts and various proposed projects. Dr. King defined water conservation as the preservation, control and development of both surface and ground water and the prevention of pollution through reductions in water use, applied water or depletion. He explained the hydrologic cycle, on-farm irrigation hydrology and the difference between wet and dry water conservation techniques.

Dr. King discussed depletions in terms of New Mexico's obligation to Texas under the Rio Grande Compact. He noted the difficulties in reducing depletions to the system by methods such as planting more efficient crops, deficit irrigation and fallowing. He provided examples to show the correlation between crop yield and water consumption and suggested that conversion to high-efficiency irrigation would lead to increased yield and a reduced amount of applied water but would also increase water depletion. In order to mitigate the increased depletion, he suggested reducing the area of cultivated acres, which would still result in increased yield. Dr. King provided other examples of water depletion, such as municipal use and treatment.

The Depletion Reduction and Offset Program (DROP) was intended to offset the effect of municipal and industrial ground water use on surface water supply for the Rio Grande Project by allowing these users to pay farmers to fallow their land, but Dr. King warned about the threat to the viability of agriculture if fallowing is poorly planned. He said that plaintiffs in the *Texas v. New Mexico* lawsuit are seeking to protect Rio Grande Project water from depletions by non-project users to reduce stress on aquifer systems but that the DROP would allow municipal and

industrial users to become project contractors. Dr. King provided a list of contingencies for the DROP and acknowledged the need to set payments high enough to attract farmers to the program. He suggested alternative sources of water, such as storm capture, imported water and desalination of brackish ground water, and discussed a desalination plant in Santa Teresa proposed by the New Mexico Water Resources Research Institute. He stated that a mix of dry and wet water conservation techniques would improve water management and that there needs to be a delicate balance between depletion management and viability of irrigated agriculture.

Responding to questions from committee members, Dr. King addressed the cost of development of a desalination plant and industrial uses of brackish water.

### **Copper Flat Mine Update**

Jeffrey Smith, P.E., chief operating officer, Copper Flat Mine; Fernando Martinez, director, Mining and Minerals Division, Energy, Minerals and Natural Resources Department; and Max Yeh, researcher, Percha/Animas Watershed Association, reported to the committee on the history, permitting processes, economic benefits and water rights litigation of the Copper Flat Mine.

Mr. Smith said that the Copper Flat Mine is a proposed polymetallic mine and processing facility in Sierra County being developed by New Mexico Copper Corporation (NMCC) that would include an open pit mine, a concentrate flotation plant, tailings storage and waste rock storage facilities. He emphasized thorough plans by NMCC to meet or exceed health, safety and environmental requirements throughout the life of the project, with plans by the company to continue water management, facility closures and long-term site monitoring even after site reclamation is complete.

Mr. Smith discussed environmental studies, initial plans and permit applications submitted to the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department, the Department of Environment (NMED), the OSE and the federal Bureau of Land Management (BLM). He acknowledged the importance of water management and conservation in the state and shared projections that the mine will require 6,100 acre-feet of water per year for operations, which will come from pit dewatering, storm water runoff and the company's ground water wells. NMCC currently only owns 861 acre-feet of adjudicated water rights and is seeking to secure additional rights. Mr. Smith added that NMCC is working with the NMED and the OSE and is currently waiting on approval from the BLM on its pending application for the mine.

Discussing the economic benefits to the area, Mr. Smith said that developing the mine will provide \$360 million in construction and start-up costs and 1,300 direct and indirect jobs during construction. During operation, about 270 employees will be needed and many more indirect jobs will result in Sierra County. He said that NMCC has already contributed about \$40 million to New Mexico residents, companies and agencies. He stated that hiring preference will go to local community members and individuals from the Jicarilla Apache Nation or individuals willing to become part of the local community. The mine is projected to generate \$175 million

in total tax revenue over the 12-year operation of the mine. He mentioned the role of copper in the clean energy revolution, such as providing power generation and energy storage.

Mr. Yeh addressed ongoing litigation more specifically. He stated that the adjudication court divided NMCC's claims into vested and inchoate water rights, of which, the court found, less than 900 acre-feet of vested rights were valid and that no inchoate rights were valid. NMCC appealed the decision regarding inchoate rights. Mr. Yeh explained the serious problem that this litigation has presented. The Constitution of New Mexico mandates that beneficial use shall be the basis, measure and limit of the right to use water in the state, he said, and in the NMCC litigation, the water rights have not been put to beneficial use since 1982. However, Mr. Yeh said that the current laws of the state do not clearly support that constitutional stipulation because the forfeiture statute was revised in 1965 to allow the state engineer to issue a declaration of nonuser, give notice and allow 12 months to remediate the fault, which has presented a loophole for NMCC because the OSE failed to give notice of forfeiture. Mr. Yeh said that the legislature will need to mandate action by the OSE to cut off a nonuser and statutorily address the issue of speculation to ensure preservation of the state's constitutionally mandated water law and efficient use of water rights. He acknowledged the important precedent that will be set by this case because water being claimed for speculative use prevents actual beneficial use and could result in the relinquishment of public ownership of water.

Responding to questions from the committee, the panelists said that:

- copper currently costs about \$2.75 per pound;
- Texas is involved in NMCC's litigation because it impacts the LRG;
- the New Mexico Mining Act is designed to be site-specific, so there is no set time line for the permitting of existing mines, but the Copper Flat Mine is considered a new mine, which requires a much lengthier federal permitting process;
- the mine needs water for daily operations to separate the minerals but will do everything possible to conserve and recycle water;
- the ISC expressed concern in the 1990s that the Copper Flat Mine would adversely affect the Rio Grande; and
- NMCC entered into a purchase agreement with the previous owner of the mine for water rights, paying \$2.6 million for vested and inchoate rights, but ultimately the adjudication judge only recognized NMCC's right to 861 acre-feet.

### **Adjournment**

There being no further business, the meeting adjourned at 1:30 p.m.